

ARTICLE 18

SECTION 1

STATE HEARINGS

1. GENERAL

This section provides regulations and procedures regarding the State hearing process for Medi-Cal cases. CMS hearing procedures are contained in Article A.

2. COMPLAINTS

Whenever possible, complaints are to be handled within the District Office at the level closest to the worker. When a dispute cannot be resolved on an informal basis, clients will be informed of their right to a State Hearing.

3. STATE HEARINGS

A State Hearing is an administrative hearing whereby clients may exercise their right to obtain a full and impartial review of a County or State action. State Hearings regarding Medi-Cal actions are governed by the State Manual of Policy and Procedures, Section 22-000 and Medi-Cal Eligibility Manual, Article 18.

The Office of the Chief Administrative Law Judge in Sacramento is responsible for the overall administration of the hearing process. This includes receiving requests for hearings, scheduling the hearings, notifying the County and clients of the hearing schedule, and providing Administrative Law Judges (ALJ) to conduct the hearings. Once a request for a hearing has been filed with the State, the process continues until the client abandons the claim, withdraws the request, or attends the hearing.

A. Filing Requests for a State Hearing

The County shall not discourage the client from seeking a State Hearing even when actions taken by staff appear correct. The worker has a responsibility to assist the client in filing the request for a hearing.

1) Written Requests

Although written requests may be submitted in any form, clients should be encouraged to use the reverse side of the Notice of Action with which they take exception. Written requests are sent to:

San Diego County Department of Social Services
Appeals Section W-402
7947 Mission Center Court
San Diego, California 92108

When a written request for a State Hearing is received by the worker, the worker will attach a gram to the request indicating the date received, and forward it to:

Appeals Section
W-402

A copy of both the gram, and the client's request is to be filed under the MISC tab in the case folder and be retained for six months. A narrative entry is to be made to record the activity.

2) Oral Requests

An oral request must be filed in person or by telephone at the Office of the Chief Administrative Law Judge in Sacramento. A toll-free number is available for this purpose. The number is 1-800-952-5253. Workers will give this toll free number to clients who want to file an oral request for a State Hearing.

The worker will make a narrative entry recording that the client was advised that an oral request for a State Hearing must be filed at the Sacramento office, and that the client was given the toll-free number to call.

B. Aid Paid Pending (APP) Procedures

1) Appeals Section Responsibility

When a client files a timely request for a hearing on a Notice of Action proposing to reduce, discontinue, or terminate aid, he/she may be entitled to Aid Paid Pending the hearing. The responsibility for the initial determination regarding APP rests solely with the Appeal Section. APP shall not be initiated nor discontinued without instructions from the Appeals Section. When aid is to be paid pending the hearing, district staff will receive specific instructions from the Appeals Section. All telephone instructions from the Appeals Section will be confirmed in writing.

2) Worker Responsibility

The worker shall promptly issue the aid in accordance with these telephone instructions, and in no event shall the action be delayed until the hearing or until written instructions are received. Form 03-4 DSS (Appendix A), advises the worker of a pending State Hearing and includes instructions for issuing APP. Workers will follow the instructions on this form. Medi-Cal benefits will continue unchanged only as it pertains to those issues covered by the appeal. Issues not covered by an appeal can still result in termination of benefits, increase, or decrease in the share of cost. In cases where APP is authorized, the State Administrative Law Judge will make a ruling at the hearing whether APP is to be continued pending the final decision on the case. The Appeals Representative will notify the worker of the ALJ's decision. Normally, the worker will be advised of APP status by a Notice of

Hearing Disposition, form 03-13 DSS (Appendix B). Form 03-12 DSS is attached to the case when it is returned to the district.

Once the appeal process has started, it is important that district staff remain in communication with the Appeals Section regarding any further case actions that affect the issues under appeal. It is the responsibility of the district to furnish the Appeals Representative with clarifying information whenever requested, both during the investigation and preparation for a State Hearing as well as after the hearing. Even after a hearing is scheduled, the worker should continue communication with the client to make every effort to correct inadvertent errors, to obtain clarifying information, and to resolve eligibility questions in compliance with this policy. However, district staff should be aware that when clients designate someone to represent them at the State hearing, it is improper to deal with the client or anyone other than the authorized representative in matters that pertain to the State Hearing. If there are any questions in this regard, staff should contact the Appeals Section and ask for the County Representative assigned to the case.

Sometimes, when the Appeals Representative has not authorized APP, the ALJ will reverse that decision at the hearing. When this occurs, the worker will receive the initial APP instructions after the hearing. The worker is to promptly issue aid for the period specified in the instructions.

NOTE: Even when APP is ordered by the ALJ, aid can still be increased, reduced, or terminated for reasons other than those addressed at the State Hearing, provided that adequate and timely notice is given.

C. Case Flow Procedures Between Appeals and Districts

The State is required to provide to both the County and the client a minimum of ten days advance notice of the scheduled hearing date and time. When the Appeals Section is notified that a hearing has been filed, the client's name is cleared on SS. The Appeals clerk prepares individual lists to each district appeals liaison to request those cases which are currently active. These requests require immediate action by district staff.

1) Time Constraints

Because of the time limits imposed by law, it is imperative that all activities relating to State Hearings be given priority attention. The State scheduling of hearings does not allow for postponements because the County may need more time to adequately prepare its position.

2) District Responsibility

The current worker is responsible for required activities in connection with State Hearings, even when the matters requiring attention were partially or wholly transacted in another district. If the case is closed, the district to which the case was last assigned will remain responsible.

Upon notification from Appeals of cases needed for State Hearings, the district liaison will request the case from the Eligibility Supervisor. The ES will review the case to assure actions have been taken in accordance with regulations, and to ensure that the financial folder is included. The current MACB documents and narrative sheets will be retained by the worker. However, a photocopy of each must be sent with the case. Requested cases will be sent to the Appeals Section through the district liaison as soon as possible, but no later than five work days from the date of the request. If this deadline cannot be met, the district is to immediately notify the Appeals Section clerk of the reason of the delay.

D. Appeals Responsibility Prior to Hearing

The Appeals Section will resolve the issues under appeal without a hearing whenever possible. The district will be notified via an Out-of-Hearing Resolution (OHR) when a case will not go to hearing due to a conditional withdrawal. Additionally, withdrawals and abandonments will not go to hearing.

1) Out-of-Hearing Resolution

a) Appeals Determination

When the Appeals Representative determines that the County action cannot be upheld in a hearing, an Out-of-Hearing Resolution shall be issued to the district office. The Out-of-Hearing Resolution decision is binding on the district, and the district must initiate the required action, without exception. If the Appeals Representative needs further clarification when evaluating whether or not an Out-of-Hearing Resolution is appropriate, he/she will review the case and issues with the district supervisor or worker, and Welfare Investigations, if a referral to that section has been made.

b) Procedure

Procedures to be followed when an Out-of-Hearing Resolution is issued are as follows:

- (1) The Appeals Representative prepares form 03-13 DSS (Appendix C). The form explains why the district action cannot be supported at hearing, the district action required, and the State and County regulations and policy involved.
- (2) IMMEDIATELY upon receipt of form 03-13 DSS, the ADC initiates assignment and implementation of the directed action. The worker assigned to complete the Out-of-Hearing Resolution action shall send a copy of the Notice of Action and/or any other pertinent documents that result from the resolution action to the Appeals Representative by the deadline indicated on form 03-13 DSS. If the worker is unable to

comply within the time allowed, he/she contacts the Appeals Representative to request an extension and advises his/her supervisor. The worker will also complete the information requested on the form 03-13 DSS.

If the district wishes to formally protest the action, the ADC will request a review by the Division within five working days. However, compliance with Out-of-Hearing Resolution instructions is required, even when the district intends to protest the instructions. To request the review, the ADC will send a statement of the district's position, with a copy of the disputed form 03-13 DSS attached, to the Division Chief of Program Support and Development (PSD) (W-401) with a copy to the Section Chief of Program Review (W-402).

The review conducted by the PSD Division Chief is designed to monitor case actions taken by the Appeals Section. It will not serve as a reassessment of the individual case situation under dispute. The PSD Division Chief will order reinstatement of the adverse action only under exceptional circumstances.

2) Conditional Withdrawal

A client may choose to withdraw his/her request for a hearing pending resolution of certain case actions mutually agreed upon. The conditions of the withdrawal specify the action to be taken by the County and/or client. The Appeals Representative provides a conditional withdrawal for the client to sign.

3) Withdrawal

When an appealed action has been rescinded, or when the client changes his/her mind about the appeal, the client can withdraw the request for the hearing. The Appeals Representative provides a withdrawal for the client to sign.

4) Abandonment of the Claim

By requesting a hearing, clients are considered to have a claim regarding their case. When they fail to appear for the hearing, they are considered to have abandoned that claim.

E. State Hearings Held

When the Appeals Representative determines that an action can be upheld, the Appeals Representative prepares the case for hearing. If the Appeals Representative determines the worker's testimony is needed at the hearing the Appeals Representative sends a gram to the ADC requesting the workers presence at the hearing and notifying them of the date, time, and place of the hearing. District staff shall comply with the request to attend unless specifically excused by the Appeals Representative. If the worker believes

that other workers were involved in the specific case action and are, therefore, better qualified to testify at the hearing, the worker should notify the Appeals Representative immediately. In some instances, it will be necessary for the current worker to attend the hearing even though he/she was not responsible for the case at the time of the disputed action. The client or his/her authorized representative may serve a formal subpoena to the worker.

Department staff shall not act as the authorized representative for a client at a hearing, as this could be considered a legal conflict of interest. Although the desire to advocate for a client in a hearing may be well-meaning, every appeal is a potential court case. Every client has a right to appeal a hearing decision in Superior Court. The identification of a client's representative as a department employee would make the fairness of the hearing suspect, and the resulting conflict of interest could hinder the client in resolving the appeal.

F. State Hearing Decisions

The County receives written verification of each hearing decision. A client's request for hearing is considered that client's claim against the County. A hearing decision may:

Grant the claim; (rule in favor of the client); or

Deny the claim; (rule in favor of the County); or

Grant in part and deny in part; or

Dismiss the claim; or

Remand the matter to the County for further action.

NOTE: State hearing decisions are not precedent setting and the decision relates only to the issues raised in conjunction with that specific case.

If the claim is denied or dismissed, the Appeals Representative forwards a copy of the decision to the district with a cover gram.

If any part of the client's claim is granted, the County is responsible for completing form DPA 27 to confirm that it has complied with the decision. In these cases, the Appeals Representative sends a copy of the decision to the district with form 03-1 DSS (Appendix D) and form DPA 27 (Appendix E).

The County must submit a compliance report on each case where a claim was granted in any part, within 30 days from the date the decision is received in the Appeals Section. The district deadline for these actions is specified on form 03-1 DSS. If the deadline cannot be met, the worker must contact the Appeals Representative.

G. County Compliance

The completed form DPA 27 is the only means by which the State monitors proper and timely compliance with hearing decisions. The client also receives a copy of the completed DPA 27 after the worker has completed it.

The form DPA 27 is completed as follows:

- 1) Review the decision and form 03-1 DSS immediately upon receipt to ensure that the compliance instructions are clear and that the deadline can be met. The DPA 27 is not to be completed until compliance action has actually been taken.

- 2) The worker completes the following sections of the form:

Date of Report: Date the form is completed.

Date Compliance Completed: Date when all of the actions ordered by the decision have been completed.

Explanation: Specify the action taken, the effective dates and/or period covered by each action, amount issued, etc.

Do not use form numbers or MACB/EDP action codes to describe the action taken.

Contact Person: Name and worker number of the person completing the compliance report.

Phone Number: Number where the contact person can be reached.

Attach all supporting documents as requested by the Appeals Representative.